

ORD 1025
10-18-12
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From: Cole, Connie
To: Florum, Donna; Peters, Lynden; King, Gary; Smith, Keith W.; Risher, Mike
Subject: FW: Draft Memo
Date: Tuesday, June 05, 2012 2:44:29 PM
Attachments: Lockheed Memo to Lissa.docx

Fredrick has decided to share his draft memo to Lissa Druback responding to EPA's latest round of questions regarding "treatment" versus "post closure" at the RCRA landfill. EPA has now indicated to ODEQ that they are considering *overfiling* ODEQ's permit which would mean EPA would issue its own permit at The Dalles. Again, the crux of the conversation appears to be the treatment vs. post closure issue. Apparently there are some conversations occurring at higher management levels, but we haven't seen anything in writing, yet.

Bill confirmed that he is still attempting to arrange a meeting with Cami Grandinetti, but doesn't anticipate it will occur before mid-month.

From: MOORE Fredrick [mailto:MOORE.Fredrick@deq.state.or.us]
Sent: Tuesday, June 05, 2012 2:28 PM
To: Bath, Bill; Cole, Connie
Subject: Draft Memo

Hi Bill and Connie,

Attached is a draft memo that likely will not be finalized anytime soon, but so far in discussion no one is stating that it is fundamentally wrong. So this represents, for now, the likely DEQ position. The main thing is we're waiting for EPA written justification next week and then see what we have.

See what you think, Fredrick

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State of Oregon
Department of Environmental Quality

Memorandum

Date: [Insert Date]

To: Lissa

From: Fredrick

Subject: Preliminary Analysis of EPA's Determination that the Lockheed Martin
The Dalles Facility is a Treatment Facility

Hi Lissa, I am writing this memo in hoping that it is an aid for your discussion with Wendy before Rick Albright's future phone discussion with her.

Preface

From my staff perspective, I hope all parties realize we are wrangling about the use of a 100-watt incandescent light bulb and a .27 horsepower vacuum blower.

Introductory Remark

Also from my staff perspective, Region 10's position is one of the most illogical, bizarre and frustrating things I have heard in my 24 years in the hazardous waste program. I will let further legal and fellow colleagues' review support or deny my perspective. Further, if EPA's view is to position us into giving them another agenda item which we're not aware of, I hope EPA will be honest and let us know what it is.

Background

As a pilot project, ARCADIS pumped CO₂ gas into the RCRA landfill through a gas vent located on top of the landfill. The goal was to enhance in-situ biological treatment to more aggressively degrade free cyanide in the leachate. There was some enhanced degradation, but the cost/benefit analysis was prohibitive. However, ARCADIS does believe that attaching a vacuum blower at the gas vent which would draw air through the sides of the landfill (the landfill only has a HDPE liner at the top portion of the landfill) and through the leachate line that services the leachate collection tank and such air ultimately exhausts through the gas vent.

In addition, DEQ allowed the facility to attach a 100-watt incandescent light bulb above the leachate tank (located in a metal shed next to the landfill). Current leachate production is low being drips. The light adds heat that

evaporates a portion of the leachate and it has been unnecessary to pump out leachate since 2008.

Questions Regarding the EPA Position

1. What is the basic tenet of EPA's position?

EPA believes that the vacuum blower and light bulb, not matter how trivial, constitutes RCRA treatment and therefore the landfill is no longer a landfill but a treatment unit. Further, EPA position is that landfills cannot both be a landfill and treatment unit.

My Response: At 40 CFR 260.10 both landfill and disposal facility is defined. Landfill is defined as "Landfill means a disposal facility ... where hazardous waste is placed in or on land ... Disposal facility is defined as "Disposal Facility means a facility ... at which hazardous waste is intentionally placed into or on land ... at which waste will remain after closure." The Lockheed RCRA landfill was closed in 1991 and waste remains in place therefore in perpetuity, unless the waste is removed, it will remain a landfill and require a post-closure permit. There is no regulation that stipulates how the status of a landfill can change.

2. Is there treatment going on at the landfill and leachate tank?

EPA believes there is.

My Response: No. However, there is no guidance in this particular scenario that would clearly answer the question. McCoy points to the definition of treatment at 40 CFR 260.10 as being a 2-step analysis, where both steps must be met in the affirmative. The first step is that the activity must change the physical, chemical or biological character or composition of hazardous waste. The current activity is not changing the liquid leachate into gas or solid, the chemical constituents before and after the activity remains the same and honestly not sure what the biological characteristic of a hazardous waste is, but the activity uses the bugs that already are in the media and new bugs are not introduced. McCoy simply states "Simply put, if an activity does not change a hazardous waste, it is not treatment." The activity does not affect the leachate's listing as K088. The first step in determining treatment is not met here. (The second step, though, probably is due to volume reduction (light bulb) and less hazardous (air blower).

Another way to look at this is that without the activities, native bugs and ambient temperature are already causing the reactions. The light bulb and air blower are only changing the rates of the reaction, much

like a catalyst. By definition, a catalyst is not part of a chemical equation, but just changes the rate of reaction which is not necessarily new treatment.

Caution: Region 10 may not accept McCoy's 2-step analysis. One guidance document from the RCRA Policy Compendium can be inferred it is not a 2-step process. See 9432.1987(03). McCoy cites a federal case of *Shell Oil v. EPA* as supporting a view of the definition of treatment, but I have not reviewed the case. McCoy also cites another Policy Compendium document whose link is below. This document is not conclusive for me because EPA determined whether treatment was occurring at the first step only and did not specifically state how the 2 steps interrelate. However, at RCRA Policy Compendium 9444.1990(01) EPA does say it is a 2-step process.

Link

3. OK, let's assume both EPA and DEQ thinks the activities are treatment. Can a landfill be a treatment unit?

EPA believes no, they are mutually exclusive.

My Response: Yes. They are not mutually exclusive. There is no regulation that explicitly prohibits treatment at a landfill. And just because there is no explicit regulation that says treatment is allowed at a landfill automatically means it is prohibitive.

Typically, landfills are not considered treatment units because under the LDR program, hazardous waste must be treated before placed onto land (into a landfill). So one would not consider a landfill being a treatment unit. However, there is no ban on land disposal units being treatment units when one considers that surface impoundments, which are land disposal units, are allowed to treat.

An example to consider. DEQ allows Chemical Waste Management to take a landfill's leachate and surface apply the leachate to the landfill. There are studies that show that this recirculation helps detoxify the leachate arguing that this could be (beneficial) treatment. Would EPA then say these landfills are treatment units?

4. How does RCRA address treatment regulation?

EPA wants to see operations plans, closure plans and operational parameters.

My Response: If agreed to incorporate treatment into the post-closure

permit, I would simply state on the title page of the permit that it is also a treatment permit and simply state in the permit they can use the light bulb and air blower. I do not care if they use this equipment, or not. The landfill functions well without the equipment and if the Permittee thinks there is a benefit, I don't want to be over administratively burdensome to let them do so.

Are we neglecting RCRA regulations regarding treatment? No. There is no single section in RCRA called "RCRA Treatment Regulations." RCRA regulates treatment by placing appropriate conditions at the RCRA units. So if you're treating in tanks, you would put conditions in the tank portion of the permit. Within the RCRA tank regulations, for example, what does it say about RCRA treatment? Except for some prohibitions on ignitable and reactive waste, which prohibitions are applied to all the other RCRA unit regulations by the way, there is nothing specific about RCRA treatment. This leaves the permit writer the flexibility to address RCRA treatment as best as they can. And for this de minimus treatment, such burden as operational plans, operational parameters, closure plans, treatment goals, etc., is not necessary.

5. OK, let's assume we declare that there is treatment at Lockheed Martin. Does that make the facility an "active" facility.

EPA believes that being a treatment facility that yes, it is an active facility.

Active life of a facility is defined at 40 CFR 260.10 as "Active life of a facility means the period from the initial receipt of hazardous waste at the facility until the Regional Administrator receives certification of final closure." The facility was certified closed in 1991 and there is no regulation that says any treatment would nullify the certified closure. Therefore, Lockheed Martin is not an active facility.

6. OK, let's assume Lockheed Martin is a treatment facility. What are EPA's expectations?

EPA expects a new Part B application with an operations plan that sets forth the specifics of how the treatment operations will be conducted and set forth the treatment objective goals. If the permittee elects not to pursue the treatment, then the permittee must submit a closure plan.

My Response: Really? If this absurdity is carried forward, it is likely Lockheed Martin and ARCADIS would simply abandon the de minimis and voluntary treatment. If forced to implement a closure plan, I have no idea what a closure plan for a closed landfill would be like or for a

vacuum pump and light bulb.

7. OK, let's assume we accept EPA's opinion. What are the possible steps involved?

EPA did not expound on this much because it was agreed EPA would put this in writing in 2 weeks, or at least in their writing justify their opinion.

My Response: Theoretically it could mean this: That DEQ would need to deny the permit application for post-closure and require a new Part A and Part B application for the treatment permit. That might involve another round of permit fees and/or cost recovery. I don't know. Likely Lockheed would abandon the treatment, and I guess we would have to modify the current effective permit into having a new closure plan. Presumably after accepting that closure, we would then proceed back into a post-closure permit track.

8. What else did EPA state?

EPA stated that some of the treatment at the facility should meet LDRs and that the status of the CERCLA landfill has changed.

My Response: I did not well understand the ramifications of what all this means at the CERCLA landfill. If significant, I suggested in an email that the CERCLA folks consult with the Region 10 RCRA folks. For meeting LDRs, generally in-situ treatment is not considered "land disposal" so LDRs are not relevant. See McCoy and RCRA Policy Compendium 9484.1994(01).